

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PA ADVISORS, LLC, §
Plaintiff, § Civil Action No. 2:07-cv-480-RRR
v. §
GOOGLE, INC., et al., § JURY TRIAL DEMANDED
Defendants. §

nXn TECH, LLC'S RESPONSE TO YAHOO! INC.'S MOTION IN LIMINE NO. FOUR

Yahoo's Motion in Limine No. 4, in which it attempts to prevent nXn from offering any evidence or testimony that Yahoo had constructive notice of the patent in suit (the "Motion") is without merit and should be denied.

In its Motion Yahoo asserts that nXn should be precluded from offering evidence regarding constructive notice because nXn is "unable to marshal any evidence showing that it marked its own products, or that any marking were 'substantially consistent and continuous.'" Motion at 7 (quoting *Amsted Indus. Inc. v. Buckeye Steel Castings Co.*, 24 F.3d 178, 187 (Fed. Cir. 1994)). However, Yahoo is simply mistaken. The evidence is clear that '067 Patent's prior owners did consistently mark tangible items associated with the claimed inventions.

First, Ilya Geller's company, Mightiest Logicon Unisearch, maintained a company website at www.unisearch.net. See Declaration of Patrick Anderson, Ex. A (excerpts of unisearch.net archive produced at PA0001419-1513) (hereafter "Anderson Decl., Ex. _"). These early webpages were archived prior to the issuance of the '067 Patent and were produced early in

this litigation to Yahoo. For example, in an executive summary of the Unisearch technology, notice is provided that “[t]he Company has applied for patent protection in the US and under the Patent Cooperation Treaty ...” Anderson Decl., Ex. A at PA0001488. Mr. Geller has previously testified that these pages came from his original Unisearch website. Anderson Decl., Ex. B (Geller August 2009 Deposition) at 152:8-153:18. Second, Geller’s company later maintained a website at Lexiclone.com, which described the patented technology in detail. Anderson Decl., Ex. C (Excerpt of Lexiclone.com) at GELLER033540 (describing the ‘067 Patent). Mr. Geller previously testified that this description was publically available as displayed on his website. Anderson Decl., Ex. D (Geller December 2009 Deposition) at 314:11-21. Courts have previously noted that a website is an object that can be marked. *See Anderson Decl., Ex. E, IMX, Inc. v. Lendingtree, LLC*, Civ. No. 03-1067-SLR, 2005 U.S. Dist. LEXIS 33179 at *12 (D. Del. December 14, 2005) (“[A]s interpreted by the Federal Circuit, the website is intrinsic to the patented system and constitutes a ‘tangible item to mark by which notice of the asserted method claims can be given.’”). *See also Soverain Software LLC v Amazon.com, Inc.*, 383 F. Supp. 2d 904, 909 (E.D. Tex 2005) (“Here, however, Amazon has produced evidence that a website can be marked by submitting screen shots of websites that include patent notices.”)

For these reasons, Yahoo’s Motion should be denied.

Dated: February 24, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

\s\ Patrick R. Anderson
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